

Town of Weare

ZONING BOARD OF ADJUSTMENT

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ZONING BOARD OF ADJUSTMENT

MINUTES

Tuesday November 1, 2011

****FINAL COPY****

PRESENT: Jack Dearborn, Chairman; Forrest Esenwine, Member; June Purington, Member; Malcolm Wright, Member; Stu Richmond, Alternate; Elwood Stagakis, Alternate; Neal Kurk, Alternate; Chip Meany, Code Enforcement Officer; Sheila Savaria, Recording Secretary

GUESTS: Ginger Esenwine, Charles Buffum, Susan Perine, Daniel Muller, Glenn Price, Charlotte Price, Lee Marcroft, Jerry Haynes, Charles Cleary

I. INTRODUCTION:

Chairman Jack Dearborn called this meeting to order at 7:35 pm at the Weare Town Offices and asked the members present to introduce themselves.

II. PUBLIC HEARINGS:

Case #0511 Continued United States of America: Variance from Article 14-1, Lot Size Reduction
506 Mount Dearborn Road
Tax Map 407-92
Residential Zone

Jack Dearborn appointed Stu Richmond, June Purington, Forrest Esenwine, Malcolm Wright, and himself as voting members for this case.

Chairman Dearborn moved to continue Case #0511 until the December 6, 2011 meeting; Malcolm Wright seconded, all voted in favor.

Case #0811 Roger Hardy Construction, LLC
Special Exception from Article 19.10
Construction in an Aquifer Zone
South side of Colby Road
Tax Map 412-170
Industrial Zone

June Purington moved to continue Case #0811 to the December 6, 2011 meeting; Malcolm Wright seconded, all voted in favor.

Case #0211 21 B&B Lane LLC

The Board had a request by Attorney Mueller, the Attorney for the Graves', to reopen the hearing that had been tabled at the previous meeting. Jack Dearborn recused himself as Chairman for this case and appointed Forrest Esenwine as acting Chairman. Neal Kurk also recused himself from this case. Mr. Esenwine appointed Ian McSweeney, Stu Richmond, June Purington, Malcolm Wright, and himself as voting members for this case.

Mr. Esenwine stated that due to there being a court case that is dealing with this, he does not feel the

Board has all the information necessary to properly address it and make a decision. Mr. Esenwine goes on to say he feels the Board is in need of guidance and council and it is his opinion that the case should be continued until the December 6, 2011 meeting to give the Board time to meet with their council and get all the information to render a proper decision.

June Purington moved to continue case #0211 till the December 6, 2011 meeting; Malcolm Wright seconded, all voted in favor.

Case #1209 Glen & Charlotte Price
Rehearing for denial of a Variance
To build a SFH on a private Road
East side of Pondview Road
Tax Map 108-43

Neal Kurk recused himself from this case. Chairman Dearborn appointed Malcolm Wright, Forrest Esenwine, June Purington, Ian McSweeney, and himself as voting members for this case.

Dan Mueller from Cronin and Bison presented this case on behalf of the Price's. The Price's own lots 7 and 8, on a private road, and had lived there for approximately 30 years. The Price's want to sell the lot at 43 Pondview Road, and they are asking the ZBA for a variance to allow a single family home to be built on it so it can be sold. They bought the land in 1985, before Article 17.1.1 was written that prohibits building permits for new houses on Class 6 or private roads. There was a variance granted in 2007 for development of lot 41, so Mr. Muller argues that this is not a case of isolated development. There is approval from the State for septic to be put in. The Price's do not believe this would alter the character of the area since they are asking for the allowance of a single family house to be built among others. The property is of sufficient size to support a single family house, and the lot has been in existence for over 30 years. It is on a private road, so public funds will not be used to maintain it. A single family home is the only economically viable use of the land, and without a variance, the Price's will have to continue to carry the tax burden as the land will be difficult to sell as an empty lot.

Chairman Dearborn asked about the challenges of the land including a steep drop leading to wetlands, issues with slopes, location of a well, and separation from wetlands and septic. Glenn Price responded that the lot in question is over 200 feet wide. On one side, there is water and a slope, but the other side has considerably less grade, and would be feasible to put a driveway. Mr. Muller reminded the Board that the only violation in question is Article 17.1.1, and not if there was a buildable area or not.

Forrest Esenwine feels the application is not complete, and that the site plan provided is over 35 years old and does not provide the required information. Also, Mr. Esenwine said there has been nothing new presented for this case. Mr. Muller responded that the plan distributed was only meant to show area and other houses in the area. Also, the new information that was provided was the fact that a recent variance had been granted for the property next door, and that the town has permitted other substantial building on this road.

Approving Abutters

David Price and Ann Harris, who have owned and lived on lot 77 for 4-5 years say they have had their lot surveyed and they are at a high point overlooking the pond. Mr. Price said there is a high point between lots 43 & 44 and the Board is unable to make a decision without the lots in question being surveyed.

Disapproving Abutters

Susan Perine, who owns a property in the area said she has considerable wetlands on her property next to the proposed driveway. She is concerned that if a property is built, it may cause issues with her wetlands since her property is at a low point. Chip Meany assured Ms. Perine that all of her concerns would be addressed and dealt with.

Chairman Dearborn closed the public meeting at 8:41pm.

Forrest Esenwine moved to grant the variance for case #1209; Ian McSweeney seconded. Discussion: Mr. Esenwine said the ordinance in question was written many years ago, and as times change, the usage of land changes with it. Just because an ordinance was set 35 years ago, does not mean it needs to stay that way. Mr. Esenwine continued by saying he feels the Board may be setting a precedent by ignoring what the town has told them to do by allowing these things. Even if the land is okay to build on, it is still up to the Board of Selectmen if they can build on a private road.

The conditions of the approval for this variance are the posting per the Town of Weare sign policy and a waiver filed at the Hillsborough County Deed of Records in Nashua, a compliant driveway, setback of wetlands, building suitable for wetlands, and the Board of Selectmen's approvals.

Forrest Esenwine moved to approve point 1; June Purington seconded. Malcolm Wright, Jack Dearborn, June Purington, and Ian McSweeney voted in favor; Forrest Esenwine was opposed. Forrest Esenwine moved to approve point 2; June Purington seconded. Malcolm Wright, Jack Dearborn, June Purington, and Ian McSweeney voted in favor; Forrest Esenwine was opposed. Forrest Esenwine moved to approve point 3; Ian McSweeney seconded, all voted in favor. Forrest Esenwine moved to approve point 4; June Purington seconded, all voted in favor. Forrest Esenwine moved to approve point 5; June Purington seconded. Malcolm Wright, Jack Dearborn, June Purington, and Ian McSweeney voted in favor; Forrest Esenwine was opposed.

The Variance from Article 17.1.1. for Case #1209 was granted by the Zoning Board of Adjustments.

Case #0711	Alma Schmid Trust
	Variance from Article 14.3.1
	Lot Size Reduction, East Road
	East side of East Road
	Tax Map 203-93

Ian McSweeney recused himself from this case. Chairman Dearborn appointed Stu Richmond, June Purington, Malcolm Wright, Forrest Esenwine, and himself as voting members on this case.

The applicant, Mr. McSweeney, is asking for the Board to allow 7.49 acres of open field on lot 203.93 to be part of a 137.3 acre partial on lot 408.123. The town will purchase lot 408.123 as part of a conservation easement, and the development rights would be owned by the Forest Society. The 7.49 acres is needed to help secure money needed for a conservation project through grant funds. Active agricultural lands have grant resources available, forested land does not.

There will be 3.55 acres left on lot 203.93, if the variance is approved. The 3.55 acres left on lot 203.93 will meet state requirements for septic loading calculations according to Mr. McSweeney's surveyor, Mike Dahlberg. The 7.49 acres is currently part of lot 203.93 that has a 5-unit apartment building on it. Mr. Esenwine pointed out that in the RA Zone, for multi-family housing, the requirement is 2 acres for each dwelling unit, so there is 10 acres needed for this lot to comply since there are 5 units. If Mr. McSweeney's variance is approved, he will be reducing the lot size from what should be 10 acres to 3.55 acres, making the lot more nonconforming.

Mr. McSweeney read the 5 points of hardship from his application in total and Chairman Dearborn closed the public meeting at 9:13pm.

Forrest Esenwine moved to approve point #1; June Purington seconded. Jack Dearborn, June Purington, Malcolm Wright, and Forrest Esenwine voted in favor; Stu Richmond was opposed. Forrest Esenwine moved to approve point #2; June Purington seconded. Discussion: Malcolm Wright commented that the size of the remaining lot 203.93 is an issue because the ordinance is specific about

the requirements. Although it is an excellent plan and would be good for the Town, the Board would be setting a precedent that people will say they did this for the town, but won't do it for an individual. Jack Dearborn, June Purington, and Forrest Esenwine voted in favor; Stu Richmond and Malcolm Wright were opposed.

Forrest Esenwine moved to approve point #3; June Purington seconded. Jack Dearborn, June Purington, and Forrest Esenwine voted in favor; Stu Richmond and Malcolm Wright were opposed.

Forrest Esenwine moved to approve point #4; June Purington seconded. Jack Dearborn, June Purington, Forrest Esenwine and Malcolm Wright voted in favor; Stu Richmond was opposed.

Forrest Esenwine moved to approve point #5; June Purington seconded. Jack Dearborn, June Purington, and Forrest Esenwine voted in favor; Stu Richmond and Malcolm Wright were opposed.

The variance from Article 14.3.1 was granted. Ian McSweeney stepped back in as a Board member.

III. OTHER BUSINESS:

Variance Extension: Chip Meany presented a variance extension for Robert Bailey, Case #2707, that was originally granted October 5, 2010. Jack Dearborn appointed all ZBA members as voting members.

Forrest Esenwine moved to grant the extension for Robert Bailey, Case #2707; June Purington seconded, all voted in favor.

Minutes: Forrest Esenwine moved to accept the amended minutes of the August 2, 2011 meeting; Ian McSweeney seconded, all voted in favor.

Forrest Esenwine moved to accept the amended minutes of the September 13, 2011 meeting; June Purington seconded, all voted in favor.

IV. ADJOURNMENT:

As there was no other business to come before the Board, Forrest Esenwine moved to adjourn at 9:30 pm; Stu Richmond seconded, all voted in favor.

Respectfully Submitted,

Sheila Savaria
Recording Secretary